IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2005

CORAM

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S.K.KRISHNAN

W.P.Nos.2874 and 2875 of 2002 and
W.P.M.P.Nos.4029 and 4030 of 2002

1. The Director General of Police
and the Chairman
Uniformed Services Recruitment Board
No.4, 9th Cross Street,
Indira Nagar, Adayar,Chennai-20.

2. The Commissioner of Police
Chennai City.

3. The Inspector of Police
P2 Otteri Police Station
Law and Order, Chennai City
Chennai.12.

.. Petitioners
in both W.Ps.

vs

1. C. Senthilkumar

2. The Registrar
Tamil Nadu Administrative Tribunal
Chennai.

.. Respondents
in both W.Ps.

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Writ Petition No. 2874/2002 is filed under Article 226 of the Constitution of India, praying this Court for the issue of a writ of certiorari, calling for the records of the Tamil Nadu Administrative Tribunal, the 2nd respondent herein pertaining to the orders made in O.A. No.7107/99 dated 27.01.2000 and quash the same.

Writ Petition No.2874/2002 is filed under Article 226 of the Constitution of India, praying this Court for the issue of a Writ of Certiorari, calling for the records of the Tamil Nadu Administrative Tribunal the 2nd respondent herein pertaining to the

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orders made in C.A. No.72/2001 in O.A. No.7107/1999 dated 5.11.2001 and quash the same.

For Petitioners in both W.Ps. ... Mr. E. Sampathkumar Govt. Advocate

For 1st respondent in both W.Ps. ... Mr. P.I.Thirumoorthy

ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

Aggrieved by the order of the Tamil Nadu administrative Tribunal dated 27.1.2000 made in O.A.No.7107 of 1999, the Director of General of Police and the Chairman, Uniformed Services Recruitment Board, Chennai and two others have filed W.P.No.2874 of 2002. The same petitioners questioning the order of the Tribunal in C.A.No.72 of 2001 in O.A.No.7107 of 1999 dated 5.11.2001 have filed the W.P.No.2875 of 2002.

2. It is seen that the first respondent herein made an application for Recruitment for the post of Grade II Police Constable in March 1998. He attended the prescribed tests conducted by Tamil Nadu Uniformed Services Recruitment Board and came out successful. After completion of the above process, the first respondent herein was furnished Verification Roll Specimen Form with instruction to fill up all the 21 columns in the said specimen form. Insofar as column 16 in the specimen form, require the details of any conviction or involved in any Criminal case or other offences. In respect of this column, the first respondent herein has furnished a " Nil " reply under dated 19.2.1999 giving inference that he was not involved in any Criminal case. The Verification Roll submitted by the first respondent was sent to the Inspector of Police P.2, Otteri Police Station for verification and confirmation of the details furnished by the first respondent. On verification it was found out that the first respondent involved in the station Crime No.584 of 1996 under Section 75 of Madras City Police Act and he was convicted and sentenced to pay a fine of Rs.100/- in the criminal case, accordingly he became ineligible to be recruited as Grade II Police Constable. Further, he had chosen to suppress the factum of his conviction and therefore, he was not appointed to service as Police Constable.

3. Aggrieved by the same, the first respondent filed O.A.No.7107/1999 before the Tamil Nadu Administrative Tribunal, seeking for a direction for appointment as Grade II Police Constable. By the impugned Order dated 27.1.2000, the Tribunal directed the Director of General of Police and the Chairman of the Uniformed Services Recruitment Board, Chennai-20 to appoint the

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first respondent as Grade II Police Constable. Since the order of the Tribunal was not implemented, the first respondent filed Contempt Application in C.A.No.72 of 2001 before the Tribunal. By order dated 5.11.2001, the Tribunal issued further direction to the Commissioner of Police to issue the order of appointment as Grade II Police Constable to the first respondent herein within a period of four weeks in consultation with the Director General of Police, Chennai-4. The petitioners herein being aggrieved, filed both the writ petitions questioning both the orders of the Tribunal.

4. Heard the learned Government Advocate and the learned counsel appearing for the contesting first respondent.

5. It is true that in the application form, particularly with reference to the antecedents of the applicant, he had not mentioned the conviction and sentence under Madras City Police Act and the same was revealed only on verification. That was the reason, the Department did not consider the claim and select him as Grade II Police Constable. It is not in dispute that he was otherwise qualified. Taking note of the fact that the applicant had not suffered any other punishment and even the incident referred in the verification report had taken place in the year 1996, the Tribunal issued direction for appointing the applicant as Grade II Police Constable. The other Order came to be passed due to non compliance of the same.

6. The learned Government Advocate by drawing our attention to an unreported decision of the Supreme Court in Civil Appeal No.13231 of 1996 dated 4.10.1996 would submit that in the light of the conduct and character of the applicant in not informing the relevant fact, the Tribunal has committed an error in issuing positive direction for the appointment. He also relied on the Division Bench decision of this Court dated 15.7.2002 made in W.P.No.24464 of 2002.

7. On the other hand, the learned counsel appearing for the contesting first respondent relied on the following decision of the Supreme Court as well as of this Court

1. PAWAN KUMAR VS. STATE OF HARYANA AND ANOTHER (1996 (4) Supreme 764;
2. COMMISSIONER OF POLICE VS. DHAVAL SINGH (1999 1) SCC 246;
3. T.S.VASUDEVAN NAIR VS. DIRECTOR OF V.S.S.C (1988 (Supp) Supreme Court Cases 795;
4. A Division Bench decision of this Court dated 30.9.2004 made in W.P.No.44297 of 2002.
5. A Division Bench decision of this Court dated 21.4.2005 made in W.P.No.41789 of 2002 and 43754 of 2002.
6. The Division Bench decision of us reported in THE

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SECRETARY TO GOVERNMENT, HOME DEPARTMENT AND OTHERS VS. P.RAVICHANDRAN NAIR AND ANOTHER (Manu/TN/1706/2005)

AND

7. Another Division Bench decision of us reported in VIRABHAGU.P. VS. THE UNION OF INDIA (2005 (1) CTC 429.

8. In addition to the above decisions, he also brought to our notice in the case similarly placed person, the Director General of Police accepted the claim of the person concerned and issued selection order.

9. It is to be noted that the offence said to have involved by the first respondent herein relates to the Madras City Police Act. No doubt he was convicted and sentenced to pay a fine of Rs.100/-. It is the claim of the first respondent that omission to refer the same in the application form is not a deliberate one and by inadvertently the same was not mentioned. However, according to him, the correct information was brought to the notice of the authority without further loss of time. In the first decision referred to above, viz., 1996 (4) Supreme 764 their Lordships have held that punishment of fine up to Rs.2,000/- on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in Government service.

10. In 1999 (1) SCC 246 the Honourable Supreme Court, after finding that the concerned authority did not apply its mind to the intimation given by the applicant regarding acquittal in the Criminal case and the same was supplied before canceling the appointment and ultimately set aside the order of the authority and issued necessary direction.

11. In 1988 (Supp) SCC 795, three Judges of the Hon'ble Supreme Court have concluded that the denial of appointment on the sole ground of non-disclosure of such conviction is not justified. In that case, the person concerned had not disclosed that during emergency he had been convicted under the Defence of India Rules for having shouted slogans on one occasion. After finding that for suppression of such incident in the application form, their Lordships have concluded that he should not have been denied employment and set aside the order of the High Court and ordered appointment.

12. In W.P.NO.44297 of 2002 dated 30.9.2004, the Division Bench upheld the similar order passed by the Tribunal. Similar order has been passed by another Division Bench of this Court in the order dated 21.4.2005 made in W.P.No.41789 of 2002 and 43754 of 2002.

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13. We had an opportunity to consider similar order passed by the Tamil Nadu Administrative Tribunal in MANU/TN/1706/2005. After considering earlier decision in 2005 (1) CTC as well as the decision of the Supreme Court in REGIONAL MANAGER, BANK OF BARODA VS. PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AND ANOTHER (1999 (2) SCC 247 we accepted the similar claim as that of the claim taken by the first respondent herein and confirmed the similar order passed by the Tribunal.

14. In the light of the above referred weighty decisions passed in identical circumstances, we do not find any error or infirmity on the part of the Tribunal in accepting the claim of the first respondent herein. We have already referred to the instances wherein the Director General of Police accepted the similarly placed person and issued necessary orders in favour of the person concerned.

15. It is the grievance of the learned Government Advocate that the Tribunal is not justified in issuing positive direction to the first respondent, who is the selection authority. It is true that even if there is any error or flaw after setting aside the same, direction may be issued to the authority concerned to consider the claim of the applicant if he or she is otherwise eligible. In the case on hand, the Tribunal has issued positive direction to the first respondent not only for appointment but also for training etc. We are of the view that such positive direction is not permissible. Inasmuch as we accept the claim of the applicant, direction is issued to the petitioners herein to consider the case of the first respondent namely C.Senthil Kumar if he is otherwise suitable on the date of selection. Both the Writ Petitions are disposed of accordingly. No costs. Consequently W.P.M.P.Nos.4029 and 4030 of 2002 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

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   and the Chairman
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   P2 Otteri Police Station
   Law and Order, Chennai City
   Chennai.12.
4. The Registrar
   Tamil Nadu Administrative Tribunal
   Chennai.

1 cc to the Govt. Pleader, SR. 46139
1 cc to Mr.P.I. Thirumoorthi, Advocate, SR. 46367

W.P.Nos.2874 and 2875/2002

KLT (CO)
kk 29/11

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